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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,102	02/17/2004	Arnd Kessler	H 5335 PCT/US	9903
423	7590	12/08/2004	EXAMINER	
HENKEL CORPORATION THE TRIAD, SUITE 200 2200 RENAISSANCE BLVD. GULPH MILLS, PA 19406			MRUK, BRIAN P	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/780,102	Applicant(s) KESSLER ET AL.	
	Examiner Brian P Mruk	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-17-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 4, 18 and 69 are objected to because of the following informalities:

In instant claim 4, parenthesis should be inserted before the terms "enanthic", "capric", "lauric", and "myristic" for consistency purposes.

In instant claim 18, the phrase "and in particular" should be deleted, since there is only one disclosed range.

In instant claim 69, the phrase "and especially preferably" should be deleted, since there is only one disclosed range.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-21, 25-27, 35, 43-54, 60-75 and 97 are rejected under 35 U.S.C. 102(b) as being anticipated by Drapier et al, U.S. Patent No. 4,752,409.

Drapier et al, U.S. Patent No. 4,752,409, discloses an automatic dishwashing detergent comprising 5-35% by weight of an alkali metal tripolyphosphate, 2.5-20% by

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weight of sodium silicate, 0-9% by weight of an alkali metal carbonate, 0.1-5% by weight of a chlorine bleach stable foam depressant, a chlorine bleach, a thixotropic thickener, 0-10% by weight of sodium hydroxide, a polyvalent metal salt of a long chain fatty acid, and water to balance (see abstract and col. 4, lines 3-18). It is further taught by Drapier et al that the polyvalent metal salt of a long chain fatty acid includes zinc stearate (see col. 9, lines 25-34), and that the composition may contain additional ingredients that are suitable for use in dishwashing detergents (see col. 10, lines 35-47). Specifically, note Examples 1-4, in which zinc distearate is used as the polyvalent metal salt of a long chain fatty acid. Therefore, instant claims 1-21, 25-27, 35, 43-54, 60-75 and 97 are anticipated by Drapier et al, U.S. Patent No. 4,752,409.

4. Claims 1-14, 19-27, 35-38, 40, 43-49, 60-76 and 97 are rejected under 35 U.S.C. 102(b) as being anticipated by Cilley, EP 383,482.

Cilley, EP 383,482, discloses an automatic dishwashing detergent composition comprising 0.1-8% by weight of a detergent surfactant, a chlorine bleach ingredient, 10-80% by weight of a detergent builder, and a zinc salt (see abstract and page 3, lines 1-9). It is further taught by Cilley that the zinc salt includes zinc carbonate (see page 3, lines 41-43), and that the surfactant includes nonionic surfactants (see page 5, lines 1-15). Specifically, note Example III. Therefore, instant claims 1-14, 19-27, 35-38, 40, 43-49, 60-76 and 97 are anticipated by Cilley, EP 383,482.

Claim Rejections - 35 USC § 103

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-27, 35-39, 43-54, 60-76 and 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahmed, U.S. Patent No. 5,229,027.

Ahmed, U.S. Patent No. 5,229,027, discloses an aqueous liquid automatic dishwashing detergent comprising 0-40% by weight of a builder salt, 0-40% by weight of sodium silicate, a chlorine bleach compound, a metal iodate, 0-30% by weight of an alkali metal carbonate, 0-5% by weight of an organic detergent material, 0-5% by weight of a chlorine bleach stable foam depressant, 0-3.5% by weight of a polymeric thickener, 0-5% by weight of a fatty acid thickener, 0-8% by weight of sodium hydroxide, and 25-75% by weight of water (see abstract and col. 4, lines 35-51). It is further taught by Ahmed that the fatty acid thickener includes zinc stearate (see col. 9, lines 28-53), and that the composition also contains 0.1-5% by weight of anionic and/or nonionic surfactants (see col. 14, lines 60-63).

Although Ahmed generally discloses an aqueous liquid automatic dishwashing detergent containing zinc stearate, the reference does not require such liquid automatic dishwashing detergent compositions containing this component with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated an aqueous liquid automatic dishwashing detergent, as taught by Ahmed, which contained zinc stearate, because such automatic dishwashing detergents fall within the scope of those taught by Ahmed. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such an aqueous liquid automatic dishwashing detergent containing zinc stearate is expressly suggested by the Ahmed disclosure and therefore is an obvious formulation.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-97 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-75 of copending Application No. 10/752,947. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/752,947 claims a similar dishwashing composition comprising 20-50% by weight of a

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phosphate builder, 0.1-70% by weight of a copolymer of a carboxylic acid and a monomer containing sulfonic acid groups, 7.5-30% by weight of a nonionic surfactant, a polyacrylic acid thickener, nonaqueous solvents, a zinc salt of a polymeric organic acid, chelants, enzymes, redox-active substances, and adjunct ingredients (see claims 1-60 of copending Application No. 10/752,947), as required by applicant in the instant invention. It is further claimed by copending Application No. 10/752,947 that the dishwashing composition is contained in a water-soluble enclosure, such as polyvinyl alcohol (see claims 61-75 of copending Application No. 10/752,947). Therefore, instant claims 1-97 are an obvious formulation in view of claims 1-75 of copending Application No. 10/752,947.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1-97 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61 of copending Application No. 10/753,130. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/753,130 claims a similar dishwashing composition comprising 20-50% by weight of a phosphate builder, 0.1-70% by weight of a copolymer of a carboxylic acid and a monomer containing sulfonic acid groups, 75-25% by weight of a nonionic surfactant, a polyacrylic acid thickener, nonaqueous solvents, a zinc salt of a polymeric organic acid, chelants, enzymes, redox-active substances, and adjunct ingredients (see claims 1-46

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of copending Application No. 10/753,130), as required by applicant in the instant invention. It is further claimed by copending Application No. 10/753,130 that the dishwashing composition is contained in a water-soluble enclosure, such as polyvinyl alcohol (see claims 47-61 of copending Application No. 10/753,130). Therefore, instant claims 1-97 are an obvious formulation in view of claims 1-61 of copending Application No. 10/753,130.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BPM

Brian Mruk
December 4, 2004

Brian P. Mruk

Brian P. Mruk
Primary Examiner
Tech Center 1700